160 U.S. 369.

AGREED RECORD.

160-369.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1894.

No. ~~137~~ 140

SARAH VAN WAGENEN ET AL., APPELLANTS,

vs.

RUFUS K. SEWALL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF FLORIDA.

RECORD FILED JULY 26, 1891.
AGREED RECORD FILED OCTOBER 15, 1894.

(15,091.)

(15,091.)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1894.

No. 427.

SARAH VAN WAGENEN ET AL., APPELLANTS,

vs.

RUFUS K. SEWALL.

APPEAL FROM THE ~~CIRCUIT~~ District COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF FLORIDA.

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1 Supreme Court of the United States, October Term, 1894.

SARAH VAN WAGENEN *et al.*, Appellants,
vs.
RUFUS K. SEWALL. } No. 427.

Appeal from the district court of the United States for the northern district of Florida.

Agreed Record.

The court is respectfully referred to 16 Peters, page 196, case of The United States *vs.* Hanson, Supreme Court Reports of the United States, for a history of this grant and preface to this printed record.

This decision affirms the validity of the claim, but orders a new survey. Under this decision the following mandate was issued:

UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the honorable the judge of the superior court for the district of east Florida and to the surveyor public lands in the district of east Florida, Greeting:

Whereas lately, in the superior court for the district of east
2 Florida, before you, in a cause wherein John M. Hanson, John I. Hedrick, Bernardo Segui and Dionicia Segui, his wife, were claimants and The United States respondent, the decree of the said superior court was in the following words, viz: The court doth order, adjudge, and decree that the claim is valid, and that in accordance with the laws and customs of Spain and under and by virtue of the late "treaty of amity, settlement, and limits between the United States of America and the King of Spain," ratified by the President of the United States on the 22d February, 1821, and under and by virtue of the laws of nations and of the United States it is hereby confirmed, adjudged, and decreed unto the said claimants to the extent, for the number of acres, and at the place as in the memorial of and the grant to Samuel Miles and as in the certificate and plat of survey of said land made by Don Robert McHardy and dated the 7th May, 1815, and filed herein, is set forth, to wit, five miles square of land situated at the mouth of the River Santa Lucia, the lines of the said survey thereof are as follows, to wit: The first line commences at a cedar tree, marked M, on the bank of the Indian river and runs south sixty degrees west four hundred chains to a pine marked M; the second line commences at said pine and runs north thirty degrees west four hundred chains to another pine marked M; the third line runs from said pine north sixty degrees east four hundred chains to a live oak marked M on the banks of Indian river, and the fourth line is formed and bounded by said river, as by the inspection of the tran-

script of the record of the said superior court, which was
3 brought into the Supreme Court of the United States by virtue of an appeal, agreeably to the act of Congress in such case made and provided, fully and at large appears;

And whereas in the present term of January, in the year of our Lord one thousand eight hundred and forty-two, the said cause came on to be heard before the said Supreme Court on the said transcript of the record and was argued by counsel, on consideration whereof it is now here ordered, adjudged, and decreed by this court that the decree of the said superior court in this cause, so far as it declares the claim of the petitioner to be valid, be, and the same is hereby, affirmed; but that the said decree, so far as it confirms the survey made by Don Robert McHardy, dated the 7th May, 1815, be, and the same is hereby, reversed, and that a survey be made of the lands contained in the said concession according to the terms thereof for the number of acres and at the places therein designated, so that it does not interfere with the rights of the third parties; and it is further ordered by the court that a mandate be issued to the surveyor of public lands, directing him to do and cause to be done all the acts and things enjoined on him by law and as required by the decree and opinion of this court in this case, and that the case —, and the same is hereby, remanded to the said superior court for further proceedings to be had therein in conformity to this decree and the opinion of this court, which is hereunto annexed.

Wherefore you, the surveyor of public lands in the district
4 of east Florida, are hereby directed to do and cause to be done all the acts and things enjoined on you by law and as required by the decree and opinion of this court, which is hereto annexed.

And you, the judge of the said superior court for the district of east Florida, are hereby commanded that such further proceedings be had in said cause in conformity to the decree and opinion of this court, which is hereunto annexed, and as according to right and justice and the laws of the United States ought to be had, the said appeal notwithstanding.

Witness the Honorable Roger B. Taney, Chief Justice of said Supreme Court, the second Monday of January, eighteen hundred and forty-two.

WM. THOMAS CARROLL,
Clerk of the Supreme Court of the U. States

Endorsement: No. 20. Mandate. 1842. U. States *vs.* Hanson *et al.* Filed Nov. 23rd, 1844.

A true copy.

PHILIP WALTER, *Clerk.*

November, 1844, the superior court for the district of east Florida, the Honorable Isaac H. Bronson, judge, by decree of that date ordered a new survey to be made by the surveyor general

of Florida of the said grant according to the opinion
5 and mandate of the Supreme Court aforesaid.

The surveyor general of Florida, acting under the said decree of the said supreme court, thereupon made a survey of the said grant through his deputy, Houston, and returned the same June 14th, 1845, to said court.

At the April term of the district court of the United States for the northern district of Florida, which said court was the successor of the superior court for the district of east Florida under the act of Congress of February 22nd, 1847, upon exceptions to said survey taken by the district attorney a decree was rendered by said court April, 1848, Judge Bronson presiding, rejecting the said last-named survey made by Houston as not conforming to the former decrees and the opinion and mandate of the Supreme Court, said survey having again been made by the surveyor in a square form, and by said decree further ordered the surveyor general of Florida to make a further and new survey "in accordance with the principles stated by the Supreme Court and its mandate."

In the District Court of the Northern Dist. of Florida, April Term, 1850.

In the Matter of the Land Claim of JOHN M. HANSON and Others for 16,000 Acres of Land
vs.
THE UNITED STATES.

6 To the Hon. Isaac H. Bronson, judge of the district court of the northern district of Florida:

The petition of John M. Hanson and others, claimants, respectfully represent to your honor that in the year of our Lord 1840 the superior court of the eastern district of Florida, at the July term of said court, in said year, under and by virtue of the power, jurisdiction, and authority conferred thereupon by acts of Congress, as well as by the supplementary act of Congress passed the 23 day of May, 1828, entitled "An act for the settlement and confirmation of private land claims in Florida," decreed to your petitioners under the provisions of said acts of Congress sixteen thousand acres of land granted by the governor of the province of East Florida to Samuel Miles, at the mouth of the River Santa Lucia, in conformity with the survey of Robert McHardy; that an appeal from said decree was taken to the Supreme Court of the United States, and at the January term of said court, 1842 (see 16 Peters, 196), the said Supreme Court decree, under the provisions of said acts the said sixteen thousand acres of land to your said petitioners, and that the said Supreme Court reversed so much of the said decree of the said superior court as fixed the location of said tract of land and remanded the cause to this court, with instructions to this court to locate the same according to the principles laid down in the decision of the said Supreme Court, and requiring this court to found its decree of confirmation on the new survey or location.

And your petitioners further show unto your honor that by the eleventh section of an act of Congress passed the 26th of
7 May, 1824, entitled "An act enabling the claimants to lands within the limits of the State of Missouri and Territory of Arkansas to institute proceedings to try the validity of their claims," and which said section is by act of Congress extended to similar claimants in Florida, it is provided that if in any case it should so happen that the lands decreed to any claimant under the provisions of that act shall not have been theretofore located in each and every such case it shall and may be lawful for the party interested to enter, after the same shall have been offered at public sale, the like quantity of land, in parcels conformable to sectional divisions and subdivisions, in any land office in the State of Missouri, &c

Your petitioners aver that inasmuch as the said lands thus decreed to your petitioners were not located before the passage of the act of Congress extending said section to Florida claims, and your petitioners have not as yet accepted any location thereof and the same is not located, that your petitioners are entitled to enter the like quantity of land, &c., in any land office in the State of Florida, &c.

Your petitioners therefore make this their application and do hereby apply for the benefits derivable under said eleventh section of said act of Congress extending as aforesaid to Florida claimants and for the right to enter a like quantity of land in parcels, &c., in any land office — the State of Florida, &c.

Your petitioners humbly pray that your honor will please direct and order that location of said *laws* decreed as aforesaid to
8 your petitioners be not made, and that your honor will be pleased to take under consideration this the said application of your petitioners and hear and determine and adjudicate whether your said petitioners are lawfully entitled to enter the said quantity of land in parcels, &c., in any land office in the State of Florida, &c., as is provided by said acts of Congress, and if your petitioners are thus entitled that then your honor will make such decree or orders as may be necessary and proper in the premises.

And may it please your honor to grant an order to be issued, directed to the attorney of the United States for the northern district of Florida, commanding him to appear and answer this application and show cause why the prayer of your said petitioners should not be granted.

And, as in duty bound, your petitioners will ever pray, &c.

W. A. FORWARD,
Attorney for Claimants.

Endorsement: In the district court. In the matter of the land claim of John M. Hanson and others for 16,000 acres of land *vs.* The United States. Petition. Filed as of 26th April, 1850. W. A. Forward, att'y for claimants.

A true copy.
[SEAL.] PHILIP WALTER, *Clerk.*

Endorsed: Petition of Hanson *et al.* for floats, &c. Filed April 26, '50.

9 In the District Court of the United States, Northern District of Florida, April Term, 1851.

In the Matter of the Land Claim of JOHN M. HANSON & Others for 16,000 Acres of Land
vs.
THE UNITED STATES.

George N. Call, Jr., United States attorney for the northern dist. of Florida, saving and reserving unto himself all manner of benefits of exception, &c., which may be taken to this petition of said petitioners filed at the last April term of this court, nevertheless for answer thereunto saith that he does not deny that, as stated by said petitioners, their claim for sixteen thousand acres of land, lying at the mouth of the River Santa Lucia and originally granted to Samuel Miles, has been by the Supreme Court of the United States adjudged to be valid, nor doth he deny that the survey of Robert McHardy of the said lands which was offered in evidence in the court below was rejected by the said Supreme Court and a new survey of said lands ordered by the said court in conformity with the principles laid down in their decision.

But in answer to so much of said petition *and* prays that said petitioners may be decreed to be entitled to the right to
10 enter the like quantity of land at any land office in this State in legal subdivisions after the same shall have been exposed for entry this respondent, answering, saith that by the mandate of the said Supreme Court said petitioners are restricted to their right to have said lands surveyed in the place designated in said grant, and this respondent further contends that the said lands were located in the meaning of the said eleventh section of the act in said petition alluded to, the said lands having been surveyed by one Robert McHardy, a private surveyor, at the instance and request of said original grantee, and under said survey the said original grantee was constructively, if not actually, in possession of said lands. This respondents further submits to the court whether after the lapse of some years from the rendition of the decree of the Supreme Court in the premises, during which time a survey of said lands and a relocation of the same has been made by the implied, if not express, consent of said petitioners, they will not be held and taken to have elected to abandon all right to the benefits of said 11th section above referred —, provided any such right should ever have existed, and this respondent contends that said application should have been made, if made at all, before the rendition of the decree in the court above ordering a new survey of said lands to be made at the place designated in the original grant.

This respondent further exhibits to the court here a survey of said lands made by the surveyor general of Florida in con-
11 formity with the mandate of the Supreme Court of the United States and the principles contained in their decision above

referred —, which he prays may be taken as a part of this his answer, which survey, this respondent contends, is an execution in all respects of the mandate issued by the Supreme Court in this cause; wherefore he prays that it may from the basis of the final decree of this court and that he may be hence dismissed with his reasonable costs.

GEORGE W. CALL, Jr., *U. S. Att'y.*

Endorsement. United States ag'st John M. Hanson *et al.*, 16,000. Petition for leave to float. Answer. Filed Ap'l 18th, 1851. Call, U. S. att'y.

A true copy.
[SEAL.] PHILIP WALTER, *Clerk.*

Endorsed: Exceptions of U. S. to petition for floats. April term, 1851. Sets up Randolph survey in defense & prays confirmation.

EXHIBIT.

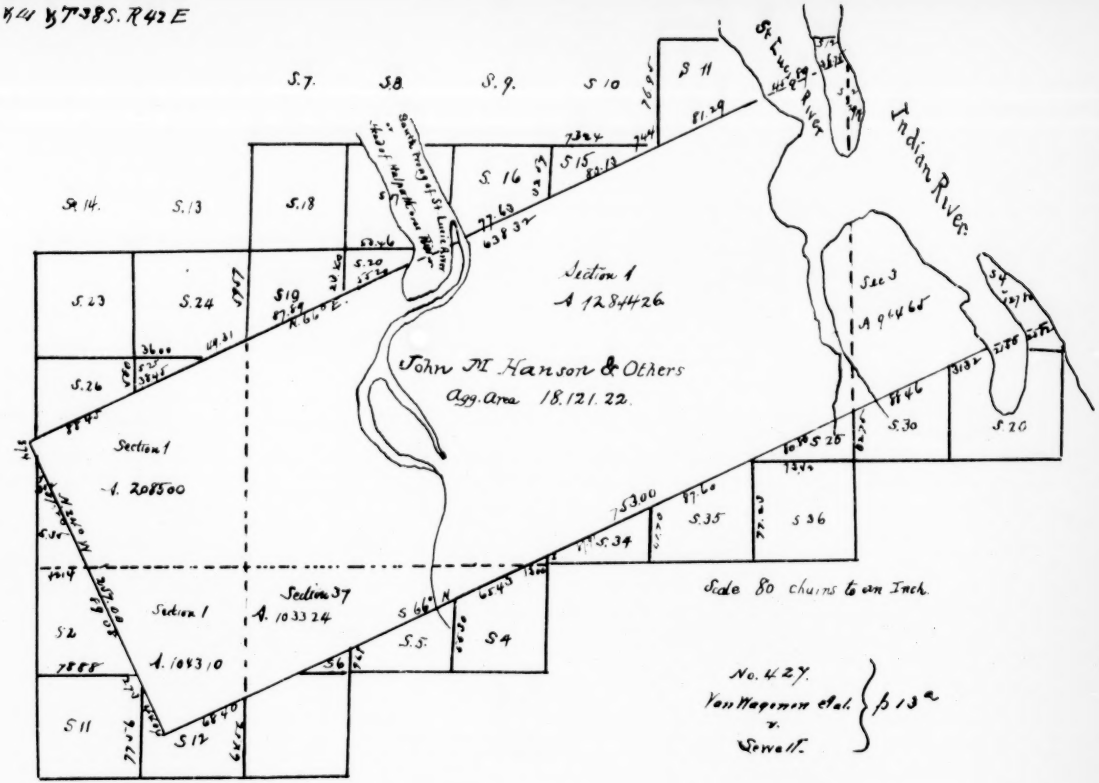
Plat and Description of the Claim of John M. Hanson and Others for 16,000 Acres.

This claim is designated in report E, "register of mill grants," as claim No. 19, in the name of Samuel Miles (see State Papers, vol. 5, pages 73 & 75; see also vol. 3 of State Papers, page 693),
12 from which it appears that this claim with certain papers in relation thereto were filed on the 29th of November, 1823, by the commissioners of the district of east Florida appointed in pursuance of the act of Congress of the 3d of March, 1823, entitled "An act amending and supplementary to the 'Act for ascertaining claims and titles to land in *within* the territory of Florida,' and to provide for the survey & disposal of the public lands in Florida." (See Statutes at Large, vol. 3, pages 709 & 754.)

This claim was reported to Congress on the 12th of December, 1827, by the register and receiver for the district of east Florida, acting as commissioners under the 4th section of the act of Congress of the 8th of February, 1827, entitled "An act to provide for the confirmation and settlement of private land claims in east Florida and for other purposes." (See Statutes at Large, vol. 4, page 202.)

The said claim was confirmed to the claimants by decree of the superior court for the district of east Florida at the November term, 1840. An appeal having been taken to the Supreme Court of the United States, the said decree of the superior court was affirmed, so far as relates to the validity of the title, at the January term, 1842; but the decree of the superior court relating to the form of the survey (five miles square) was reversed and the superior court ordered to have a new survey made in accordance with the rule or standing law of the province that "the front on the river could not exceed one-third of the longitudinal extension back."

T38S39 S. R40 & 41 & T38S. R42 E



See certified lists of claims confirmed in the "superior
13 court" and "Supreme Court of the United States" and certified copy of the files and records of the superior court and opinion and decrees of the Supreme Court in this cause on file in the surveyor general's office.

(Here follows map marked p. 13*a*.)

The above plat of the claim of John M. Hanson and others for 16,000 acres, situated in townships 38 & 39 south, in ranges 40 & 41 east, and township 38 south, in range 42 east, showing its connections with the lines of the adjoining public surveys, is correctly constructed from the field-notes of the survey thereof as executed in the year 1851 by Arthur M. Randolph, deputy surveyor, under his contract with Benj. A. Putnam, surveyor general of Florida, of the 19th of October, 1850.

Survey executed at a variation of 4° east. For field-notes see vol. 170, page 507. For connections see vol. 175 and vol. 99.

Description.

Beginning at a point on the west bank of Indian river "south of mouth of St. Lucia river" for S. E. corner of this survey and N. E. corner of fractional section 20, township 38 south, in range 42 east; from said point a cabbage bears S. 43 E. 23/ links distant; thence
S. 66° W. along "old line" for south boundary of this sur-
14 vey, 16.50 chains leave low hammock and enter water and mangrove 25.82/ chains to point on the east bank of bayou; from said point a mangrove bears N. 13 W. 22/ links and a mangrove bears S. 27 E. 11 links distant, at 47.32 chains a point on the west bank of bayou and at the edge of low hammock; from said point a mangrove bears N. 53 W. 13/ links and a mangrove bears S. 9° W. 11/ links distant, 59.00 chains leave hammock and enter scrub, 50.47 chains the point of intersection with the line between sections 20 & 29, 3.50 chains west of the corner to said sections on the west bank of the bayou; from said point a cabbage bears N. 80° E. 4 links and maple bears S. 8 E. 23 links distant, 78.64 chains the point of intersection with the line between sections 29 & 30, 68.38 chains north of the corner to sections 29, 30, 31, 32; no bearings described in the field-notes; 122.00 chains leave scrub, 129.00 chains cross a branch runs north, 139.00 chains to scrub, 158.00 chains to bay gall, 162.00 chains cross a branch twice runs N. E. and enters pine and palmetto, 167.16 chains the point of intersection with the line between ranges 41 & 42, 32.75 chains north of the corner to sections 25, 30, 31, 36 on said line; from said point a pine bears S. 22 W. 74 links and a pine bears S. 1° E. 12 links distant, 196.50 chains cross a branch runs north, 247.90 chains the point of intersection with the line between sections 25 & 36, 73.42 chains west of the corner to said sections on the east boundary of the township; from said point a pine bears N. 81 E. 1.80 links and a pine bears S. 54 E. 1.60 links distant, 254.30 chains the point

of intersection with the line between sections 35 & 36,
15 77.23 chains north of the corner to said sections on the south boundary of the township; from said point a pine bears S. 22 W. 1.34 links and a pine bears S. 66 E. 68/ links distant, 316.00 chains grass pond, 335.00 chains leave pond and enter pine and palmetto, 339.00 chains " to same pond," 341.90 chains the point of intersection with the line between sections 34 & 35, 41.70 chains north of the corner to said sections on the south boundary of the township; no bearings taken, the point being in a shallow pond; 351.00 chains leave pond, 369.00 chains to pond, 382.00 chains leave pond, 390.00 chains arm of same pond, 394.00 chains leave pond, 420.00 chains enter pond, 427.00 chains leave pond, 429.81 chains the point of intersection with the line between sections 33 & 34, 5.85 chains north of the corner to said sections on the south boundary of the township; from said point a pine bears S. 65 E. 54 links and a pine bears S. 14 W. 50 links distant, 444.00 chains the point of intersection with the line between townships 38 & 39 south, 13.00 chains west of the corner to sections 33 & 34 on said line; from said point a pine bears S. 20° E. 39 links distant, 448.00 chains to pond, 454.00 chains leave pond, 509.43 chains the point of intersection with the line between sections 4 & 5, 55.30 chains north of the corner to sections 4, 5, 9, 8; from said point a pine bears S. 62° W. 1.00 links and a pine bears S. 62° E. 1.55 lks. distant, 512.00 chains to low hammock, oak, cabbage, bay, &c., 522.00 chains " to Halpatic river, deep, slow current, banks 4 feet high," 523.28 chains to point on west bank of
16 river, it being 1.48 links wide, at about 597.00 chains (distance not given in the field-notes) the point of intersection with the line between sections 5 & 6, 19.68 chains north of the corner to sections 5, 6, 7, 8; from said point a pine bears S. 83 E. 22 links and a pine bears S. 37 W. 2.31 links distant, 608.42 chains to creek .58 links wide, rapid, deep, and bluff banks, 610.00 chains to creek and offset north 1.00, chain and at 617.00 chains regained line on west side of creek, 622.00 chains cross a deep gully branch runs east, 630.00 chs. cross same creek runs N. E., 635.00 chains to creek and up same, 638.00 chains leave creek running S. E., at about 646.15 chains (distance not given in field notes) the point of intersection with the line between sections 6 & 7, 44.90 chains west of the corner to sections 5, 6, 7, 8; from said point a pine bears N. 87 E. 2.88 links and a pine bears S. 43 W. 63/ links distant, 684.60 chains the point of intersection with the line between ranges 40 & 41, 64.56 chains north of the corner to sections 7, 12, 13, 18 on said line; from said point a pine bears S. 40 E. 54 links and a pine bears S. 45 W. 58 links distant, 753.00 chains a post for S. W. corner of this survey and a corner to fractional section 12, township 39 south, range 40 east; from said point a pine marked J. M. H. X. bears N. 3° E. 9 links distant.

Thence N. 24° W. along the west line of this survey, 44.04 chains the point of intersection with the line between sections 11 & 12, 77.56 chains north of the corner to sections 11, 12, 13, 14; from said point a pine bears N. 86 W. 47/ links and a pine bears
17 S. 4° E. 75 links distant, 46.77 chains the point of intersec-

tion with the line between sections 2 & 11, 78.88 chains east of the corner to sections 2, 3, 10, 11; from said point a pine bears south 40 links and a pine bears N. 82° W. 1.70 links distant, 55.00 chains cross a branch runs east, 70.50 chains cross a branch runs east, 81.00 chains cross a branch runs east 134.00 chains, enter a pond, 135.85 chains the point of intersection with the line between townships 38 & 39 south, range 40 east, 42.14 chains east of the corner to sections 2, 3, 34, 35 on said line; from said point a pine bears N. 85 W. 1.92 links and a pine bears S. 22 W. 1.48 links distant, 140.00 chains leave pond, 165.00 chains to pond, 174.00 chains leave pond, 202.00 chains to pond, 207.00 chains leave pond, 215.00 chains to pond, 222.00 chains leave pond, 222.95 chains the point of intersection with the line between sections 26 & 35, 7.82 chains east of the corner to sections 26, 27, 34, 35; from said point a pine bears N. 39 W. 43 links and a pine bears S. 33 W. 70 links distant, 242.25 chains the point of intersection with the line between sections 26 & 27, 17.57 chains north of the corner to sections 26, 27, 34, 35; from said point a pine bears N. 74 W. 1.25 links and a pine bears S. 9° E. 2.18 links distant, 251.00 chains the point for N. W. corner of this survey and a corner to fractional section 27; from said point a pine bears S. 75 E. 18 links distant, marked J. M. H. X.

Thence N. 66° E. along the north line of this survey, 3.90 chains the point of intersection with the line between sections 26 &
18 27, 50.50 chains south of the corner to sections 22, 23, 26, 27; from said point a pine bears N. 48° W. 2.03 links and a pine bears N. 11° E. 67 links distant, 4.00 chains to pond, 9.00 chs. leave pond, 92.35 chains the point of intersection with the line between sections 25 & 26, 15.80 chs. south of the corner to sections 23, 24, 25, 26; from said point a pine bears N. 14° E. 1.40 links and a pine bears N. 22 W. 1.36 links distant, 130.80 chs. the point of intersection with line between sections 24 & 25, 36.00 chains east of the corner to sections 23, 24, 25, 26; from said point a pine bears S. 81° W. 1.55 links and a pine bears N. 55 W. 53 links distant, 180.11 chains the point of intersection with the line between ranges 40 & 41 east, 59.57 chains south of the corner to sections 13.24, 18.19 on said line; from said point a pine bears N. 10 E. 3.00 lks. distant, 237.00 chains a pond, 247.00 chains leaves pond, 268.00 chains the point of intersection with the line between sections 19 & 20, 23.40 chs. south of the corner to sections 17, 18, 19, 20; from said point a pine bears N. 27 E. 1.10 links and a pine bears S. 72 W. 27 links distant, 270.00 chs. enter pond, 274.00 chains leave pond, 326.20 chs. the point of intersection with the line between sections 17 & 20, 53.46 chains east of the corner to sections 17, 18, 19, 20; from said point a pine bears N. 8 E. 55 links and a pine bears S. 78 W. 1.10 links distant, 330.28 chains to a point on west bank of Halpatty river, from which a pine marked J. M. H. X. bears S. 10 W. 87 links distant, 356.54 chains a point on the east bank of Halpatty river and in edge of "mangrove swamp" (the said river is 25.96 chains wide on the line), 361.67 chains
19 to river (the swamp being 5.43 chains wide), 365.19 chains a point on the east bank of river, which is 3.52 chains

wide, 377.00 chains to pond, 383.00 chs. leave pond, 442.82 chains the point of intersection with the line between sections 15 & 16, 32.57 chs. south of the corner to sections 9, 10, 15, 16; from said point a pine bears N. 63 W. 72 links and a *l*ine bears N. 36 E. 84 links distant, 514.00 chs. to pond, 518.00 chains leave pond (long and narrow), 522.95 chains the point of intersection with the line between sections 10 & 15, 73.24 chains east of the corner to sections 9, 10, 15, 16; from said point a pine bears N. 25 E. 46 links and a pine bears S. 85 W. 1.67 links distant, 530.39 chs. the point of intersection with the line between sections 10 & 11, 76.95 chains south of the corner to sections 2, 3, 10, 11; from said point a pine bears N. 23 E. 20 links and a pine bears N. 6 W. 25 links distant, 572.00 chains "pond," 582.00 chains leave pond, 589.00 chains "pond," 594.50 "chains leave pond, 600.00 chains "spruce pine," 611.68 chains a "stake" on the S. W. bank of St. Lucia river; from said stake a cabbage marked X. H. bears S. 71 E. 2.83 links distant, 657.57 chains a point on the N. E. bank of St. Lucia river, from which a mangrove marked X. H. bears S. 71 E. 21 links distant (the river is 45.89 chains wide on the line of the survey), 676.50 chains leave hammock, 688.32 chains a point on the west bank of Indian river for N. E. corner of this survey and the S. E. corner to fractional section 12; from said point a pine marked X. H. bears S. 10 W. 2.58 links and a pine bears N. 52 W. 1.67 links distant.

20 NOTE.—The meanders constituting a part of this survey, owing to their peculiar character, are of necessity here entered in detached parts: 1st. Beginning at a point in the north line of this survey, on the east bank of the head of Halpatty river, called for at 356.24 chains in the notes of survey of said line, thence around the head of said river, which lies within the survey, *at* follows: S. 23° 45' E. 11.00 chains, thence south 6.00 chains, thence S. 29 W. 20.00 chains, thence S. 54½ W. 30.00 chains, thence N. 47¼ W. 15.00 chains, thence N. 28½ E. 34.75 chains to the point on the west bank of said river and in the north line of this survey called for in the field-notes of the survey at 330.28 chains.

2nd. Beginning at the S. E. corner of the survey, on the west bank of Indian river, thence along the bank of Indian river and around a point of land extend- north and lying between said river and a bayou, as follows: N. 24½ W. 6.00 chains, thence N. 43 45' W. 59.00 chains, thence N. 68 W. 10.00 chains, thence west 5.00 chains, thence S. 23 W. 5.00 chains, thence S. 31 E. 29.00 chains, thence S. 44 E. 30.00 chains, thence south 11.00 chains to the point on the south line of the survey and east side of the bayou called for in the field-notes of the survey at 25.82 chains.

3rd. Beginning at the point in the south line of this survey and west side of the bayou called for in the field-notes of the survey of the line at 47.32 chains—

Thence with the meanders of the west bank of the bayou, Indian river, and St. Lucia river, as follows: N. 49¾ W. 20.00
21 chains, thence N. 23 W. 25.00 chains, thence N. 67½ E. 8.00 chs., thence north 3.00 chains, thence west 10.00 chs., thence

N. 23 W. 7.00 chains, thence N. 55 W. 12.50 chs., thence N. 15½ W. 21.00 chains, thence N. 38¾ W. 10.00 chains, thence N. 44 W. 10.50 chains, thence N. 27½ W. 9.00 chains, thence N. 47 W. 7.50 chains, thence N. 72¼ W. 7.00 chains, thence N. 21 W. 5.00 chains, thence west 3.00 chains, thence S. 28 W. 6 chs., thence S. 85 W. 6.00 chains, thence S. 9 W. 3.00 chs., thence N. 87 W. 5.50 chains, thence S. 72½ W. 3.85 chs. to a point in the line between ranges 41 & 42 east, township 38 south, 17.00 chains north of 3rd mile post, thence S. 46¾ W. 12.00 chains, thence S. 79 W. 9.50 chains, thence S. 12½ W. 4.50 chains, thence S. 77 W. 6.00 chains, thence S. 33¾ W. 3.00 chains, thence S. 27½ E. 9.00 chains, thence S. 12¾ E. 9.00 chains, thence S. 8 W. 21.50 chains, thence S. 31 E. 16.00 chains, thence S. 13¾ E. 15.50 chains, thence S. 30 E. 10.00 chs., thence S. 59½ W. 6.00 chains, thence N. 66½ W. 12.00 chains, thence N. 19 W. 10.00 chains, thence N. 9 E. 9.00 chains, thence N. 36½ W. 18.00 chs., thence north 9.00 chains, thence N. 4½ E. 20.00 chains, thence N. 30½ W. 11.00 chains, thence N. 39 E. 4.50 chains, thence north 9.00 chains, thence N. 26½ E. 6.00 chains, thence N. 70½ W. 25.00 chains, thence N. 49¼ W. 14.00 chains, thence N. 3¼ W. 15.00 chains, thence N. 13½ E. 19.00 chs., thence N. 44 E. 24.00 chains, thence N. 33½ E. 26.00 chains, thence N. 82 W. 10.00 chains, thence S. 85¼ W. 13.00 chains, thence N. 59½ W. 15.00 chains, thence N. 72¼ W. 9.00 chains to the
22 point in the north line of this survey and on the west bank of St. Lucia river called for in the field-notes of the survey of the north line of this survey at 611.68 chains.

4th. Beginning at the N. E. corner of this survey, on the west bank of Indian river, and meander around a point of land extending south and lying between Indian river and St. Lucia river, as follows: S. 26¼ E. 20.00 chains cross "X range line," thence S. 12½ E. 22.00 chains, thence S. 4¼ W. 30.50 chains, thence S. 59 W. at 3.00 chs. cross X "range line" at 8.00 chains and of course, thence N. 74 W. 8.00 chains, thence N. 18 W. 14.00 chains, thence N. 13 E. 25.00 chains, thence N. 35 W. 25.00 chains, thence N. 82½ W. 12.50 chains to a point on the north line of this survey and on east bank of the St. Lucia river called for in the field-notes of the north line of this survey at 657.57 chains and 30.75 chains S. 66 W. from the N. E. corner of this survey. This completes the survey of the entire claim, containing an aggregate area of (18,121.22) eighteen thousand one hundred twenty-one acres and twenty-two hundredths of an acre.

SURVEYOR GENERAL'S OFFICE,
TALLAHASSEE, FLA., *November 25th*, 1871.

The foregoing record of the plat and description of the claim of John M. Hanson and others for 16,000 acres is hereby approved.

M. L. STEARNES,
Surveyor General.

23 U. S. SURVEYOR GENERAL'S OFFICE,
TALLAHASSEE, FLORIDA, *March 1st*, 1888.

I hereby certify the foregoing to be a true copy of the plat and description of the claims of J. M. Hanson and others, as surveyed

by A. M. Randolph, a deputy surveyor, under contract with B. A. Putnam, surveyor, in 1851, approved and on file in this office. Having no seal of office, I here affix my private seal.

W. D. BLOXHAM,
Surveyor General.

JOHN M. HANSON & Others
vs.
THE UNITED STATES. } Land Claim for 16,000 Acres.

APRIL 15TH, 1851.

This cause having been brought on for a further and final hearing under or in pursuance of the mandate of the supreme court, and also upon the petition of the claimants, filed at the last April term of this court, and the answer thereto, which petition prays that the claimant may be allowed the benefits of the 11th section of the act of Congress of the 26th May, 1824, in relation to certain claimants in Missouri, which by subsequent act of Congress was extended and made applicable to claimants in Florida, and a certified copy of
the plat of location and survey of this grant, under and by
24 the authority of the surveyor general of Florida, having been
filed on the 18th day of April instant and produced to the court, and after hearing the proofs & allegations of the respective parties and the arguments of counsel, to wit, Mr. Forward, of counsel for claimants, and Mr. Call, district attorney, on behalf of the United States, it is ordered, adjudged, and decreed that the prayer of the said petition above mentioned be denied, and that the same be dismissed, and on motion of the district attorney on behalf of the U. S. it is further ordered, adjudged, and decreed that the aforesaid location and survey of the lands in question in this cause, as made by and under the direction of the surveyor general of Florida, in the first quarters of 1851, by A. M. Randolph, deputy surveyor, and approved by the surveyor general aforesaid on the — day of ——, 1851, to the extent of sixteen thousand —— hundred and —— acres, as will more fully appear by reference to the certified copy of said survey & plat of the same filed in this court as aforesaid on the 18th day of April instant, be, and the same is hereby, confirmed, and that the lands mentioned and described in said survey and plat, with the metes and bounds therein mentioned and set forth and at the place therein described, are the lands granted or intended to be granted to the claimants or those under whom they claim under and by virtue of the original concession or donation from the Spanish government heretofore declared valid by the former decrees in this cause.

And it is further ordered and decreed that the said lands
25 as thus located, surveyed, and described as above men-
tioned are hereby fully and finally decreed and confirmed to the said claimants.

Endorsement: Hanson *et al. v* The U. S.; also the entry case of M. E. Levy of 15,000 acres. Filed April 29th, 1837.

I, Philip Walter, clerk of the United States district court, northern district of Florida, do hereby certify that the foregoing is a true and correct copy of its original from the files and record in my office as recorded in Chancery Record Book A, page 49.

In witness whereof I have hereunto set my hand and official seal, at the city of Jacksonville, in the district aforesaid, this 3rd day of October, 1890, and of our Independence the 115th year.

PHILIP WALTER,
Clerk U. S. Dist. Ct.

Endorsed: Decree confirming Randolph survey April 15, 1851.

In District Court of the United States, Northern District of Florida.

JOHN M. HANSON *et al.*
vs.
THE UNITED STATES.

26 *The Petition of Jonathan C. Greeley, Assignee in Bankruptcy of John M. Hanson, for Redocketing Above Cause and Survey of the Hanson Grant.*

To the Hon. Charles Swayne, judge of said court:

Your petitioner, John C. Greeley, respectfully showeth that he is the assignee in bankruptcy of John M. Hanson, duly heretofore appointed by this honorable court.

That said estate has never been settled, and that a large per cent. of the indebtedness due by said bankrupt estate is still unpaid.

That in 1813 the Spanish government granted to one Francis Miles a grant of land of 16,000 or more acres of land on the Indian river in the province of Florida, embracing the mouth of the San Lucie river, which grant was duly surveyed to said grantee in a square form at the place named and to the extent.

That said Miles afterwards granted and conveyed, by deed duly executed to the aforesaid John M. Hanson, a one undivided one-third interest in all said grant of land.

That said Miles also granted to one Bernardo Segui a one undivided one-third interest in said lands; that said Segui is dead, and that Agatha O'Brien is the administratrix of his estate.

That in 1840 the supreme court of the district of east Florida confirmed said grant and survey to the interested parties; that, on appeal by the United States from the decree of said court to the Supreme Court of the United States, said Supreme Court, at its session in 1842, affirmed the decree of the lower court,
27 but set aside the said survey and ordered the surveyor general of Florida to make a new survey of said grant at the place called for and to the extent as granted by the royal order of the Spanish government.

And your petitioner avers that no survey has ever been made by the surveyor general of Florida, as required and directed by the

order, opinion, and mandate of the said Supreme Court of the United States, and that it is necessary that one should be made and confirmed by this honorable court. Your petitioner, here making party to these proceedings Agatha O'Brian, administratrix aforesaid, and all other persons interested herein who to your petitioner are unknown, prays that this court will immediately order the surveyor general of this State *of* make a survey of the said Miles or Hanson grant agreeable to the decree and mandate of said Supreme Court, and that such survey may, when made, be duly reported to this court, with a plat thereof, agreeable to said mandate and order for confirmation; that said cause may be redocketed and the names of your petitioner and Agatha O'Brien substituted as plaintiffs or claimants herein, and for such further order and proceeding herein as may be proper and meet.

Your petitioner further prays that this court will order publication to be made as to all persons who may be interested herein to your petitioner unknown, requiring them to appear by a certain day herein and show cause why the relief herein prayed should not be granted.

H. BISBEE, JR.,
Att'y for Petitioner.

28 In the District Court of the United States, Northern District of Florida.

JOHN M. HANSON *et al.*
vs.
THE UNITED STATES. } Decree for Survey.

This cause came on to be heard upon a motion of H. Bisbee, Jr., on behalf of complainant to redocket the cause and for a decree *for a decree* for a resurvey of the land in controversy, the United States being represented by the Hon. E. M. Cheney, the U. S. district attorney for said district, and the complainants and claimants of the land being represented by the said H. Bisbee, Jr. It appearing to the court by the petition filed in the cause that Jonathan C. Greely, Esqr., is the assignee in bankruptcy of the estate of John M. Hanson, and that Agatha O'Brien is the administratrix of the estate of Bernardo Segui, deceased, and that the said Greeley and the said Agatha O'Brien severally represent an undivided third interest in the lands aforesaid, to wit, a Spanish grant to one Samuel Miles for (16,000) sixteen thousand acres of land, and that no survey thereof has ever been made in accordance with the mandate, decree, and opinion of the Supreme Court of the United States made and rendered at the January term thereof, 1842, and on file in this cause, on consideration thereof it is now here ordered that the names of Jonathan C. Greeley, assignee, and Agatha O'Brien, administratrix aforesaid, be submitted in the place of the parties they rep-
29 resent, and that the cause be redocketed.

It is farther decreed that William D. Bloxham, the surveyor general of the State of Florida, do forthwith survey the said Span-

ish grant to Samuel Miles, in accordance with the mandate and opinion of the Supreme Court aforesaid, and make and file in this cause a plat and map of said survey.

It is further specially decreed that the said Spanish grant shall be so surveyed that the length of said land from east to west shall be at least three times the width of the north and south line and embracing not exceeding sixteen thousand acres within the exterior lines.

Done in open court this 14th day of April, A. D. one thousand eight hundred and eighty-five.

THOMAS SETTLE, *Judge.*

April 14th, 1885.

I, Philip Walter, clerk of the United States district court for the northern district of Florida, do certify hereby that the foregoing is a true copy of the original on file and of record in my office at Jacksonville, Florida.

Witness my hand and official seal this 16th day of April, A. D. 1885.

[Seal U. S. District Court, Northern District of Florida.]

PHILIP WALTER, *Clerk.*

30 U. S. SURVEYOR GEN'L'S OFFICE,
TALLAHASSEE, FLA., *March 1st*, 1888.

I, W. D. Bloxham, surveyor general of Florida, do hereby certify the foregoing to be true copies of papers with reference to the claim of J. H. Hanson and others for 16,000 acres of land on St. Lucia river, of record and on file in this office. Having no seal of office, I here affix my private seal.

W. D. BLOXHAM,
Surveyor General.

Endorsed: In the district court of the United States, northern district of Florida. Jonathan C. Greeley, assignee, *et al. vs.* The United States. H. Bisbee, Jr., sol'r for complainants.

In District Court of the United States, Northern District of Florida.

JOHN M. HANSON *et al.*
vs.
THE UNITED STATES.

And now, on this day, this matter coming on to be further heard upon application of the petitioner, Jonathan C. Greeley, assignee in bankruptcy of John M. Hanson, and Agatha O'Brien, administratrix of the estate of Bernardo Segui, deceased, for confirmation of the survey of the Miles grant of 16,000 acres in this State, and it appearing that the surveyor general of Florida, W. D. Bloxham, has caused a survey and plat of said grant to be made in conformity with the order of this court dated April 14th,

31

1885, and has now reported the said survey and plat so made as aforesaid for confirmation, and the same appearing in accordance with the said order of this court:

It is, upon consideration thereof, ordered that said survey and plat so made by said W. D. Bloxham, surveyor general of Florida, under his contract with B. H. Hopkins, deputy surveyor, and now on file in this court, be, and the same is hereby, in all respects approved and confirmed.

(Signed) CHARLES SWAYNE, *Judge*.

A. D. 1889.

Endorsed: In the district court of United States, northern district of Florida. The United States ag'st John M. Hanson *et al.* Petition of Sarah Van Wagenen *et al.* for establishment of record. Filed June 8th, 1891. Philip Walter, clerk. H. H. Buckman, att'y for petitioners.

UNITED STATES OF AMERICA:

United States District Court, Northern District of Florida.

RUFUS K. SEWALL, in His Own Right and as Trustee, *vs.* UNITED STATES. } Land.

32 To the Hon. Thomas Settle, judge of the district court of the United States within and for the northern district of Florida:

Respectfully represents Rufus K. Sewall, of Wiscasset, Lincoln county, State of Maine:

First. That one John M. Hanson, late of St. Augustine, St. John's county, State of Florida, bargained, sold, and conveyed to him all that five thousand three hundred thirty-three and one-third acres of land, more or less, being one undivided third part of a certain grant of land containing, or supposed to contain, sixteen thousand acres, situate and lying and being in St. Lucia county, district and State of Florida; which sixteen thousand acres were heretofore granted by the Spanish government to one Samuel Miles, and by decree of the Supreme Court of the United States confirmed to the said John M. Hanson *et als.*, grantees of the said Miles, at January * term, A. D. 1842, which said five thousand three hundred thirty-three and one-third acres, or one-third part aforesaid of said Miles grant, were conveyed to him, the said Sewall, by the said John M. Hanson, by his deed duly signed, sealed, witnessed, acknowledged, and delivered the 14 day of June, A. D. 1848, and recorded in Book A, pp. 4 and 5, in the then St. Lucia county, by the Hon. J. S. Hermans, judge of probate within and for said county, October 5th, A. D. 1848, according to the statute in such case made and provided,

* See. 16, Peters, S. C., Reports, pp. 116-292.

the original of which is herewith produced; a certified copy
33 whereof is and was placed on file in the archives of the Land Office of the United States, Department of the Interior, Washington, D. C., prior to the proceedings hereinafter described.

Second. Your petitioner further represents that the consideration paid said Hanson was money had and received by him of, for and on account of, and to the use of one Anna Elizabeth Hanson, wife of your petitioner, now deceased, which deed, although absolute in form, is nevertheless in trust for the heirs-at-law, children of the said Anna E. Hanson, viz:

Martha E. Winans, of the city of New York and State of New York; Rufus Rowland Sewall, of Key West, State of Florida; Anna E. Sewall, of Wiscasset, State of Maine; Henry E. Sewall, of Hoboken, State of New Jersey; Elizabeth P. Smith, of Harlem, city and State of New York, and Emma W. O'Brien, of Muskegon, State of Michigan, all children surviving of the said Anna E. Hanson, who died at Wiscasset, aforesaid, June 29th, A. D. 1855.

And your petitioner avers that there has been no delivery of seizin and possession of any lands or parts thereof under said Miles grant nor under various locations and surveys heretofore made by said United States and no legal determination of the *locus in quo* of said grant by metes and bounds on the earth's surface to the said John M. Hanson in his lifetime or to your petitioner as his grantee since.

Your petitioner avers further that he has by due diligence and proceedings in the Department of the Interior of the United
34 States endeavored to protect and pursue his rights in law and equity, under his titles* aforesaid, and perfect the same conformable to the decree of the Supreme Court aforesaid in the premises against the defaults of the Government of the United States.

Third. Your petitioner further represents—

That said Government has made a new survey and location of the aforesaid Miles grant agreeable to order of court on the 10th of December, 1887, duly returned to and approved by the Department of the Interior, certified copy whereof was delivered to your petitioner the 15th day of October, A. D. 1888, — is presented herewith, and which survey, to the knowledge and belief of your petitioner, is — legal and just as can be had in the premises.

Wherefore he prays that the title and interest of your petitioner in the right of John M. Hanson aforesaid may be declared and said survey be confirmed in the premises as to law and justice shall appertain.

RUFUS K. SEWALL.

*Sec. files Gen. Land Office, Interior Department, Aug. 14th, 1848, Richard M. Young, Commissioner; R. K. Sewall's petition to Commissioner, Nov. 29th, 1864; Commissioner Edmunds' reply; Jan. 28th, 1885, reply of Assist. Commissioner Gen. Land Office, Harrison.

DISTRICT OF MAINE, *November 3rd*, 1888.

Then personally appeared the above-named Rufus K. Sewall and made oath to the statement above by him subscribed before me—

HENRY INGALLS,
Commissioner U. S. Circuit Court for the District of Maine.

35 In the District Court of the United States, Northern District of Florida.

JOHN M. HANSEN *et al.*
vs.
THE UNITED STATES.

The petition of Sarah Van Wagenen *et al.* for the review and reversal of the proceedings in the above-entitled cause and the decree rendered therein ordering the survey of the John M. Hanson or Miles grant by the late surveyor general, Hon. Wm. D. Bloxham, made by his deputy, C. H. Hopkins, the 14th day of April, A. D. 1885, made upon the petition of J. C. Greeley, assignee in bankruptcy of John M. Hanson *et al.*, and its approval and confirmation by this court by its order and decree rendered herein as well as *In re* Sewall *vs.* The United States the 13th day of April, A. D. 1889.

To the Hon. Charles Swayne, judge of said court:

Your petitioners, Sarah Van Wagenen, Frederick Van Wagenen, John W. Burroughs, trustee of Electra Falligant, of the city of Savannah, in the State of Georgia; Mary R. Gilbert and D. M. Gilbert, of Harrisburgh, in the State of Pennsylvania; Anna Belle Robinson and John G. Robinson, resident in the State of Georgia; Fannie E. Lanier and William H. Lanier, of Mellen, in the State of Georgia; Catherine H. Krueson, Harry S. Dreese, John W. Burroughs, and Frederick Van Wagenen, trustee for Catherine M. Hedrick, and Georgia M. Cleland, of the city of Savannah,
36 in the State of Georgia, would respectfully represent unto your honor—

That they are the owners in fee of an undivided one-third interest in the John M. Hanson or Miles grant, containing sixteen thousand or more acres, situate in the county of Dade, in the State of Florida, in townships 38 & 39 S. ranges 40 & 41 east, and township 38 S., range 42 east, being situate on the Indian river and embracing the mouth of the San Lucie river, all in said State, being the owners in fee of the one-third undivided interest of John J. Hedrick, one of the original petitioners in the above cause, and are the owners in fee of the whole of said Miles or Hanson grant by purchase from the State of Florida under certain deeds made by said State to your petitioners; all of which they are ready to produce in this court as this court may direct.

Your petitioners aver that said grant was originally granted by the Spanish government of the province of east Florida to one Samuel Miles on the 19th of July, A. D. 1813, and on the 17th of

May, A. D. 1815, was surveyed to him and set off by the surveyor of said province; that on the 17th of November, A. D. 1840, as appears by the files and records in this case, this grant and survey was confirmed to one John M. Hanson, Bernardo Segui, and John J. Hedrick, and that on appeal to the Supreme Court of the United States by The United States, defendant, at the January term of said court in 1842, the title of the claimants to said lands and the decree of said court in this regard was confirmed, but the said Supreme Court set aside the survey as irregular and by its decree and mandate ordered the surveyor general of the Territory of Florida
37 to make a new survey of the said grant to the extent and at the place named in accordance with the decree of said court and the rules and statutes governing such survey, of lands bounded upon water-ways, and further directed and ordered the superior court of the Territory of Florida to make such order and decree herein as was conformable to the said mandate; all of which will more fully appear by the records in this case.

That on December 23rd, 1842, the superior court for the province of east Florida, acting under the mandate of the said Supreme Court, ordered the surveyor general to make a new survey of the grant at the place called for and to the extent, and that he report the same with a plat and survey bill to that court; that on March 1st, 1845, a mandate and decree ordering the same matters in substance was made by that court.

Your petitioners further aver that, in compliance with said mandate and decree of the said Supreme Court and in conformity to the several decrees and orders of the said superior court for the district of east Florida ordering such new survey, the surveyor general of the Territory of Florida on October 19th, 1850, Benjamin A. Putnam, Esq., directed his deputy, Arthur M. Randolph, to make a survey of the grant as directed and ordered by the several decrees of said courts, and that in the year 1851 the said Putnam, by his said deputy, Randolph, did make such survey in pursuance of such orders and decrees and returned the same to the land office of the said Territory of Florida, and the said grant was then platted from said survey in accordance with the rules and statutes aforesaid, one-third on the front of the Indian river.

38 Your petitioners further aver that on April 15th, 1851, the said surveyor general, Benjamin A. Putnam, acting in accordance with the said several decrees and orders of the said courts, returned this survey so made by him and the field-notes so made by him to the district court of east Florida, and on that day, on petition of the said Hanson, Segui, and Hedrick, the said superior court for the district of east Florida did by its decree confirm and approve the said survey, plat, and field-notes, and did further confirm finally the said grant based on the said survey to the petitioners as surveyed and located; all of which will more fully appear by said decree, which appears duly of record in the records and order book of this court.

And your petitioners aver that that decree has never been reversed, appealed from, or set aside by any other action or decree of

this or any superior court, but still remains in force to this day, and that by such action and decree of said court that said court exhausted all its jurisdiction under the several acts of Congress in such case made and provided and could do or perform no other matter or thing therein or make or pass any other or further decree in regard thereto.

Yet, nevertheless, your petitioners aver that on the — day of ——, A. D. 1885, one Jonathan C. Greeley, claiming to be the assignee in bankruptcy of the said John M. Hanson, one of the original petitioners and plaintiffs in this cause, and one Agatha O'Brien, claiming to be the administratrix of Bernardo Segui, and
39 claiming an undivided one-third interest in said grant, respectively, did by petition in this cause, presented to this the district court for the northern district of Florida, allege and aver in and by said petition, as well as in the petition of Rufus K. Sewall, who was on motion made party thereto, that the said grant had never been surveyed nor had any survey ever been confirmed or approved by this court, as directed and required by the mandate and decree of the Supreme Court of the United States and the several decrees of the superior court for the district of east Florida as hereinabove set forth, and praying that a survey of said grant might be had and made in accordance with such mandate and decree of said Supreme Court and said superior court, and that such survey, when so made, might be confirmed by this court as provided under the act of Congress in such case made and provided, and that in pursuance of said petition this court did, on, to wit, on the 14th day of April, A. D. 1885, order the then surveyor general, the Hon. W. D. Bloxham, to make such survey, which, as appears by the files in this cause, the said surveyor general did make and return to this court in accordance with its order; that on, to wit, on the 13th day of April, A. D. 1889, this court did by its decree confirm the said survey made by the said surveyor general, Bloxham, by his deputy, Hopkins; all of which was without notice to these your petitioners, and was further illegal and improper and beyond the jurisdiction and power of this court so to do.

And your petitioners aver that the filing of the said petition by Greeley and others and the redocketing of said cause in their
40 name and the making of the said survey by the said Bloxham, through his deputy surveyor, Hopkins, and the return of said plat and the orders and decrees of said court ordering said survey and confirming *the* approving the same are invalid by reason of the fact that this court had no jurisdiction in the premises, having exhausted all jurisdiction and powers it possessed under its previous decree confirming the survey made by the deputy surveyor, Randolph, and previously confirmed by this court.

Your petitioners further aver that the allegations contained in said petition of the said Greeley, assignee, *et al.* are wholly untrue wherein they did set forth and aver that no survey or confirmation of said survey had been made by this court, and that the same was

made either through ignorance or with intention to fraudulently affect the rights of your petitioners.

Your petitioners further aver that neither the said Bernardo Segui or any representatives of his nor the said Greeley, assignee of the said Hanson, have any rights or claims in said grant and had not at the time of the filing of said pretended petition.

And your petitioners aver that the making of the said new survey by the said surveyor, Bloxham, through his deputy, Hopkins, does great and manifold wrong and injustice to your petitioners in that it greatly changes the lines of the original survey of the said Randolph, made under the decrees and orders of the Supreme Court of the United States and of this court and heretofore solemnly confirmed by it, and reduces largely the area of the said grant
41 and lines, which under the said confirmed survey as further approved by the Land Office of the United States, some two thousand or more acres, and in various other respects, as will be apparent on the face of said proceedings, affects the just rights of your petitioners.

Your petitioners therefore pray that all the said proceedings of the said Greeley, assignee, and others, and the said several orders and decrees of this court based thereon or in consequence thereof, and the said so-called survey by the said Bloxham, by his deputy surveyor, Hopkins, and the plat thereof, as returned to this court, and especially the order and decree of this court ordering the same or confirming the same, may be vacated and set aside as absolutely null and void, and that your petitioners may have such further order, decree, and relief herein as is consistent with the equities of their case and as to your honor shall seem meet.

To the end, therefore, that the said Jonathan Greeley, of Jacksonville, Florida, assignee in bankruptcy of John M. Hanson; Rufus K. Sewall, of Wiscasset, Maine, and Agatha O'Brien, administratrix of the estate of Bernardo Segui, of Knoxville, Tennessee; William M. Dallam, trustee of Francis M. Dallam *et al.*, and all others interested, may full, true, direct, and perfect answers make to the said petition as to why your petitioners should not have the relief herein and hereby prayed for, may it please your honor to grant unto your petitioners such process to be directed to the said Jonathan C. Greeley, assignee in bankruptcy of John M. Hanson; Agatha O'Brien, administratrix of the estate of Bernardo Segui;
42 Rufus K. Sewall, William M. Dallam, trustee, and all others interested by, through, or under them, therein and thereby commanding them, on a certain day and under a certain penalty therein to be named, to answer the premises and stand to and abide such order, direction, and decree herein as to your honor shall seem meet.

And your petitioners will ever pray, &c.

H. H. BUCKMAN,
For Petitioner-.

In the District Court of the United States, Northern District of Florida.

JOHN M. HANSON *et al.*
vs.
THE UNITED STATES.

This cause coming on to be heard upon motion of the solicitors for Sarah Van Wagenen *et al.* in the matter of the petition filed herein to set aside the decree of this court for want of jurisdiction, &c.:

Upon consideration thereof, it is ordered and decreed that the said petition be filed and that the clerk issue process to the defendants therein named, returnable to the rule day in January, A. D. 1891, and that this cause be redocketed.

And it further appearing that the defendant Rufus K. Sewall is a non-resident and a resident of the State of Maine and above
43 the age of twenty-one years, it is further ordered that the said defendant, Rufus K. Sewall, be, and he is hereby, ordered to appear, answer, or demur to said petition on or before the rule day in January, A. D. 1891, or the same will be taken as confessed against him. It is further ordered that a copy of this order as to defendant Sewall be published in the Metropolis, a newspaper of this district, once a week for 4 consecutive weeks.

Done & ordered this 1st day of December, A. D. 1890.

CHAS. SWAYNE, *Judge.*

A true copy.
[SEAL.] PHILIP WALTER, *Clerk.*

Endorsed: Hanson *vs.* U. S.

Process was issued and served on all the parties defendant to the petition of Sarah Van Wagenen *et al.*

In District Court United States, Northern District of Florida.

THE UNITED STATES
vs.
JOHN M. HANSON.

In re petition of Sarah Van Wagenen *et al.*

Demurrer of Rufus K. Sewall to the Petition Aforesaid.

The said Rufus K. Sewall, by Bisbee & Rinehart, his so-
44 licitors, not waiving any benefit of exception or objection, &c., says that the said petitioners have not in and by the said petition made or stated a case entitling them to any relief in this court, and that he demurs thereto.

And for cause of demurrer says that the records and proceedings attached to and made a part of said petition shows a proper and final decree has been made in the said cause adjudicating fully all the issues made therein.

2. That this honorable court has no power or jurisdiction to grant the petitioners the relief prayed for therein.

And for divers other good grounds appearing of record. Wherefor- this respondent prays judgment, &c.

H. BISBEE,
For Respondent.

I hereby certify that in my opinion the foregoing demurrer is well founded in point of law and allege that said demurrer is not interposed for delay.

H. BISBEE.

Subscribed & sworn to before me this 6th day of Jan'y, A. D. 1892.

PHILIP WALTER, *Clerk.*

After full hearing and consideration by the court the within demurrer is hereby sustained this 24th day of February, 1892.

CHAS. SWAYNE, *U. S. Judge.*

45 In district court United States. The United States *vs.* John M. Hanson. Demurrer by Sewall to petition of Sarah Van Wagenen *et al.* Filed Jan. 6, 1892. Philip Walter, clerk. Bisbee & Rinehart, for Sewall.

In the District Court of the United States, Northern District of Florida.

JOHN M. HANSON)
vs.
UNITED STATES.)

In the matter of the petition of Sarah Van Wagenen.

And now comes the petitioner herein and prays a rehearing of the demurrer to the petition herein, and avers that there is manifest error in the decision of the court sustaining said demurrer:

First. Because defendant's demurrer admitted all the facts set up by the petition and record.

Second. That said record showed, as well as the said petition, a final decree rendered and spread upon the minutes and record of this court, in 1851, fully and finally disposing of this cause, and exhausted all jurisdiction of this court; it further ordered, approved, and confirmed another survey.

Third. That it is beyond the power and jurisdiction of
46 this court, whose jurisdiction is limited to a confirmation and approval of one valid survey, to reverse after the lapse of time between 1851 and 1887 any decree or order made in this cause.

Fourth. That the decree or order of this court ordering a new survey and the survey by Hopkins and the decree of this court confirming said survey are invalid, inoperative, and without the jurisdiction of this court.

Fifth. That the decree of 1851, which fully and finally determined the status of this grant, confirmed the same and approved this survey, the same being the third one, made by Randolph, fully and finally settled this matter, and such survey the records show has been acted upon and accepted by the parties and become an ancient record before any further proceedings were sought to be had by the demurrant in this cause

And petitioner asks and hereby prays leave to file as part of the record in this cause for the information of the court the affidavit of the clerk of this court, a copy of which is attached to this petition.

H. H. BUCKMAN,
For Petitioner.

The counsel for R. Sewall will take notice that on Tuesday, March 8th, A. D. 1892, at 10 o'clock a. m., or as soon thereafter as counsel can be heard, the above matter will be called up before said court, at chamber, or wherever the said judge may sit, in the city of Jacksonville, for final disposition.

H. H. BUCKMAN,
For Petitioner.

47 Due service of a copy of above notice admitted this — day of March, 1892.

H. BISBEE.
R.

In District Court of the United States. Northern District of Florida.

JOHN M. HANSON *et al.*
vs.
UNITED STATES.

In re petition Sarah Van Wagenen.

STATE OF FLORIDA,
County of Duval.

Personally appeared Philip Walter, clerk of the circuit and districts courts of the United States for the northern district of Florida, who, being duly sworn, says:

I am the clerk of said circuit & district courts and have been since 1874; that as such officer I have the custody, keeping, and charge of all the records of said courts and have had since I have been in office.

That all the records of said courts were destroyed in the fire of May 18th, 1891; that Chancery Record Book A was among such records destroyed; that in said book appeared the decree in
48 this matter of April, 1851, and that I certified the said certified copy of such decree as appears in this record from said Record Book A and the files of my office; that very few, of any, orders or decrees in said Record Book A were signed by the judges

of said courts rendering the same; that from my examination of the records in my office before the fire it seemed to have been the custom to leave orders and decrees unsigned upon the record; very few were ever signed; that my information of such matters is based upon my frequent examination and almost daily search and examination of all such records during the long term of my official custody of such records; that during Judge Bronson's administration or while he sat upon the bench he signed no decrees, but always signed the minutes and record after each day of the terms of court, signing his name at the end of the record of the day and not to each order or decree as recorded.

That, judging from the date of this decree and my recollection of the records, this decree referred to was one of said judge's decrees, and that, while I cannot say if he signed the end of the record at the April term, 1851, at which this decree appears to have been rendered, it was his custom so to do, and it is my belief, based upon such information derived from the records, that he did so.

PHILIP WALTER.

Sworn to and subscribed before me this 29 day of February, A. D. 1892.

——— ———.

49 Endorsed: In U. S. dist. c't. Hanson *vs.* United States. *In re* petition Sarah Van Wagenen *et al.* Affidavit of clerk. In district court of the United States, northern district of Florida. John M. Hanson *vs.* The United States. *In re* petition of Sarah Van Wagenen. Petition for rehearing. Filed M'ch 22nd, 1892. Philip Walter, clerk. H. H. Buckman, for petitioner.

TUESDAY, *March 22nd*, 1892.

Court met pursuant to adjournment.

Present: Hon. Chas. Swayne, judge; J. N. Stripling, U. S. attorney; L. R. Bradley, deputy U. S. marshal; Philip Walter, clerk.

Court was opened in due form by the crier.

* * * * * * *

JOHN M. HANSON
vs.
THE UNITED STATES. } Petition for Rehearing.

This cause having been submitted this day, it is ordered that the petition be denied.

Ordered that this court do now adjourn until tomorrow morning at ten o'clock.

50 In District Court United States, Northern District of Florida.

FRANCIS MILES
vs.
THE UNITED STATES. } Petition to Confirm Grant.

In re petition of Sarah Van Wagenen *et al.*

This cause came — to be heard upon the petitioner aforesaid and demurrer to the said petition and was argued by counsel. On consideration thereof it is ordered, adjudged, and decreed that the said demurrer be, and it is hereby, sustained. Afterwards a petition for a rehearing on the part of the petitioners aforesaid was made and argued by counsel, and — consideration thereof it is ordered that such rehearing be, and the same is hereby, denied, and, no application having been made to amend the said petition, it is ordered, adjudged, and decreed that the aforesaid petition for relief be, and the same is hereby, dismissed with costs.

Done in open court this 7th day of June, A. D. 1892.

CHAS. SWAYNE, *Judge.*

Endorsed: Francis Miles *vs.* United States. *In re* petition of Sarah Van Wagenen. Filed June 7, 1892. Philip Walter, clerk.

51 In Dist. Court of United States, Northern Dist. of Fla.

JOHN M. HANSON *et al.*
vs.
UNITED STATES. } Spanish Grant Land Claim.

In re petition of Sarah Van Wagenen *et al.*

And now, in open court, at the same term, comes the petitioners herein, by H. H. Buckman, their counsel, conceiving themselves aggrieved by the orders & decrees of this court herein sustaining the demurrer to said petition, disallowing a rehearing, and dismissing said petitioners' petition, and doth hereby appeal from said orders and decrees to the Supreme Court of the United States & pray that this appeal be allowed & that a transcript of the record & proceedings & papers upon which said orders & decrees were made, duly authenticated, may be sent to the Supreme Court of the United States.

H. H. BUCKMAN,
Att'y for Petitioners & Appellant-.

JACKSONVILLE, *June* 14, 1892.

And now, on, to wit, June 14, 1892, it is ordered that the appeal be allowed as prayed, and that on appellants entering into & filing bond with surety in the sum of five hundred dollars the same operate as a supersedeas.

52 Done & ordered in open court.

CHAS. SWAYNE,
Judge Dist. Court.

Endorsed: In dist. court United States. Francis Miles *vs.* United States. *In re* petition of Sarah Van Wagenen *et al.* Petition & allowance of appeal. Filed June 14th, 1892. Philip Walter, clerk.

In District Court of the United States, Northern District of Florida, Fifth Circuit.

JOHN M. HANSON *et al.*
vs.
THE UNITED STATES. } Land Claim. Spanish Grant.

In the matter of the petition of Sarah Van Wagenen *et al.*

Know all men by these presents that we, Sarah Van Wagenen, Frederick Van Wagenen, Jno. G. Robertson, Harry S. Dreese, as principals, and R. Falligant and R. F. Harmon, as sureties, are held and firmly bound unto the United States of America in the sum of five hundred dollars; for the payment of which, well and truly to be made, we bind ourselves and each of us and each of our heirs, executors, and administrators, jointly and severally, firmly
53 by these presents.

Signed and sealed with our seals this the 11th day of July, A. D. 1892.

The condition of the above obligation is such that whereas the above-bounden Sarah Van Wagenen, Frederick Van Wagenen, Jno. G. Robertson, Harry S. Dreese have prosecuted an appeal to the Supreme Court of the United States to reverse the decision and decree rendered in the above-entitled cause by the judge of the district court of the United States for the northern district of Florida:

Now, therefore, if the above-named Sarah Van Wagenen, Frederick Van Wagenen, Jno. G. Robertson, Harry S. Dreese shall prosecute said appeal to effect and answer all damages and costs if they fail to make such appeal good, then this obligation to be void; otherwise to remain in full force and virtue.

SARAH VAN WAGENEN. [L. S.]
F. VAN WAGENEN. [L. S.]
JNO. G. ROBERTSON. [L. S.]
HARRY S. DREESE. [L. S.]
R. FALLIGANT. [L. S.]
R. F. HARMON. [L. S.]

Sealed and delivered, taken and acknowledged, this 11th day of July, A. D. 1892, at Savannah.

S. F. B. GILLESPIE,
[SEAL.] *Deputy Clerk U. S. District Court, So. Dist. Ga.*

54 Approved:

_____

Judge U. S. District Court, Northern District of Florida.

The above bond is taken and approved this 11th day of July, 1892.

CHAS. SWAYNE, *U. S. Judge.*

Endorsed: In dist. court United States, nor. dist. of Florida. John M. Hanson *et al. vs.* The United States. *In re* petition of Sarah Van Wagenen. Appeal bond. Filed Jul- 11, 1892. Philip Walter, clerk.

A true copy.

[Seal U. S. District Court, Northern Dist. of Florida.]

PHILIP WALTER, *Clerk*,
By JNO. S. DRIGGS,
Deputy Clerk.

55 Supreme Court of the United States, October Term, 1894.

SARAH VAN WAGENEN *et al.*, Appellants,
vs.
RUFUS K. SEWALL. } No. 427.

Appeal from the district court of the United States for the northern district of Florida.

It is hereby stipulated and agreed by and between counsel for the respective parties to the above-entitled cause that the foregoing typewritten pages, numbered from one to fifty-four, shall be printed and used upon the hearing of the said cause in the Supreme Court of the United States in the place and stead of the transcript of record certified by the clerk of the district court of the United States for the northern district of Florida, subject to addition or correction by either party should any material portion of said transcript be found to be omitted therefrom or incorrectly copied therein.

JOHN C. COOPER,
Counsel for Appellants.
H. BISBEE,
Counsel for Appellee.

Endorsed on cover: Case No. 15,091. Supreme Court U. S., October term, 1894. Term No., 427. Sarah Van Wagenen *et al.*, appellants, *vs.* Rufus K. Sewall. Agreed record. Filed Oct. 15, 1894.

Office Supreme Court U. S.
FILED.
DEC 19 1895
JAMES H. McKENNEY,
CLERK.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1895.

No. 140.

SARAH VAN WAGENEN ET AL., APPELLANTS,

vs.

RUFUS K. SEWALL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF FLORIDA.

BRIEF OF

H. H. BUCKMAN,
Counsel for Appellants.

RECORD FILED JULY 26, 1892.
AGREED RECORD FILED OCTOBER 15, 1894.

(15,091.)

15091.

Supreme Court of the United States,

OCTOBER TERM, 1895.

No. 140.

SARAH VAN WAGENEN, *et al.*, Appellants,	*In re* Private Land Claim, John M. Hanson.
vs.	
RUFUS K. SEWALL, Appellee.	*In re* Petition Sarah Van Wagenen, *et al.*

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN (NOW SOUTHERN) DISTRICT OF FLORIDA.

Brief of H. H. Buckman, Counsel for Appellants.

Statement of Facts.

On July 19th, A. D. 1813, the Spanish Governor of the Province of *East Florida* granted to one *Samuel Miles* a grant of land of sixteen thousand or more acres in then Dade County, Florida, in Townships 38 and 39 S., Ranges 40 and 41 East, and Tp. 38 S., Range 42 East, being situate on the Indian River and embracing the mouth of the San Lucie River, which on May 17th 1815, was surveyed to said Miles at the place above in one body by one McHardy.

Samuel Miles having conveyed or purported to have conveyed all his interest in the grant—on November 17th, 1840, on proceedings in the United States Court for the District of East Florida upon petition of John M. Hanson, Bernardo Segni, and John J. Hedrick, claiming to be joint owners of said Miles Grant—this grant and survey was confirmed to them. On appeal by the United States to the Supreme Court of the United

States the decree of the lower court in so far only as the *survey* was concerned, was *reversed* with instructions to re-survey the same *at the place called* for and to the extent—and the *Surveyor-General of Florida* was instructed to re-survey the same.

The title was confirmed. 16 Peters U. S. Repts., Page 196.

On December 23d, 1842, the Superior Court of the United States for the District of East Florida acting under the mandate of the Supreme Court ordered and directed the Surveyor-General of Florida to re survey the said grant *at the place and to* the extent in accordance with the mandate and opinion of the Supreme Court and report such survey to said court. Survey was made by Houston in a square form and rejected for that reason. Printed Record Pages 2–3.

On April 1st, 1848, a similar order in terms was entered by said court directing a further survey. Printed Record, Page 3.

On Oct. 19, 1850, Benj. A. Putnam, Surveyor-General of Florida, acting under said decrees and orders directed his deputy, A. M. Randolph, to re-survey said grant in accordance with the mandate and opinion of said Supreme Court, and in the year 1851 said Putnam, Surveyor General, by his deputy, A. M. Randolph, made a survey of said grant as directed, and returned the same with his field notes and plot to the land office of the United States.

On April 15th, 1851, Putnam, Surveyor General, made return of such survey together with a plot and field notes to the District Court of the United States for the District of East Florida as directed by said court, surveyed and plotted in accordance with said decree, and mandates and with the regulations in such case provided, *one-third on the water front instead* of in *a square form as* originally surveyed.

On that same date, on petition entitled John M. Hanson and others for Floats, Record, pages 3–4, and exceptions and answer of the District Attorney of the United States setting up the Randolph survey as a valid and proper execution of the mandate of the Supreme Court, Record, pp. 5–12; the cause came on to be heard before the District Court of the United States for the District of East Florida, which said court on that date, *April 15, 1851*, by its decree did adjudge and declare the

said *Randolph survey* of said grant as properly made and approved the same, and the plot and field notes thereof, and further finally confirmed said grant and survey to the petitioners, denying the application for Floats.

See Decree, p. 12 printed Record.

This decree was duly entered in the Chancery order book and placed on file.

See Record p. 13.

It does not appear that the decree as recorded bore the judge's signature.

It was never appealed from, reversed, amended, or set aside.

Subsequent Proceedings.

No further proceedings appear to have been had until April 14, 1885, when one J. C. Greeley, claiming as assignee in bankruptcy of Jno. M. Hanson, aforesaid, petitioned the District Court of the United States for the Northern District of Florida to grant an order directing a survey of said grant, alleging therein as the basis for such relief "*that no survey had ever been made of said grant as required by the mandate of the Supreme Court.*"

Record, pp. 13–14.

He either did not know of the decree of April 15, 1851, confirming Randolph's survey, or ignored the same.

On April 14, 1885, the said court ordered the survey as prayed in the petition, on the ground "*it had never been surveyed as directed by the mandate of the Supreme Court.*"

Record, p. 14.

Appellees were not made party to said proceedings, and no notice or publication was made.

Bloxham, Surveyor-General of Florida, surveyed the grant under the above order by his deputy Hopkins and returned the survey to the court about March 1, 1888.

Record, p. 15.

Rufus K. Sewall, appellee, in November, 1888, then intervened in said proceedings by petition of his own motion, claiming the Hanson interest claimed by Greeley, the original petitioner in these subsequent proceedings.

Record, pp. 16–18.

On April 13, 1889, the said District Court of Florida approved and confirmed the Hopkins survey under Bloxham, Surveyor-General.

Record, pp. 15–16.

This survey cut off and made the grant less by 2,000 acres than the Randolph survey. Record page 21; marginal p. 41. Between the decree confirming the *Randolph* survey and the making of the *Hopkins* survey, a period *of thirty-seven* years, the grant had been sold for taxes forfeited to the State, and conveyed by the State. Record, page 18.

December 1, 1890, appellee filed their petition in said District Court of the United States setting up all the foregoing facts, claiming sole title to said grant, setting up the confirmation of the Randolph survey, and that all subsequent proceedings including the Hopkins survey were *coram non judice* the Court having exhausted the special jurisdiction granted it in such cases when it confirmed the Grant and Randolph survey. That no notice of such subsequent proceedings had been given petitioners; that they were void, and prayed that the same be set aside and so held for naught. Record, pages 18, 19, 20, and 21.

The court allowed petition filed and ordered publication to all parties. Record, page 22.

Process was served on all defendants to petition, and publication duly made. Record, page 22.

Note: On May 18, 1891, fire destroyed the United States court house and all records.

The Record herein was duly re-established at instance of appellants.

Rufus K. Sewall, appellant, was the only defendant who appeared, filing demurrer to petition, setting up the petitioner had made no case and court had no jurisdiction to grant relief, January 6, 1892. Record, page 23.

Hearing on *Demurrer* was had February 24, 1892, and *Demurrer sustained*. Record, page 23.

Petitioners then prayed a *rehearing* by their petition filed March 8, 1892, setting up Record and certificate of clerk of the court as to decree of 1851, confirming Randolph survey. Printed Record, pages 23-4.

Clerk's affidavit. Printed Record, pages 24 5.

On hearing before court on June 7, 1892, the former decision was sustained and original petition ordered dismissed. Printed Record, page 26.

Petitioners then appealed to this court, the question being solely a *question of jurisdiction*.

Synopsis of Record.

	Page Printed Record.
History of grant, 16 Peters, U. S. Rep'ts, page 196.	
United States vs. Hanson	1
Mandate of Supreme Court of United States ordering a new survey of the grant by Surveyor-General of Florida, January, 1842	1-2
November term, 1844, Superior Court Dis't. East Florida. Order for new survey in conformity with mandate	2-3
New survey by Houston reported to court for confirmation, June 14, 1845, but refused because resurveyed square form	3
April, 1848, said court orders further survey by Surveyor-General of Florida in conformity with mandate	3
Hanson and others petition for Floats, April 26, 1850, under Missouri act	3-4
Exceptions and answer of Dist. Atty U. S. setting up new survey of grant by Randolph, deputy under Surveyor-General of Fla., Putnam, and asking confirmation of survey and plot	5-12
Survey and field notes of grant by Randolph . . .	6-12
Plot by Randolph	7

The court on April 15, 1851, thereupon finally decreed as follows:

1. Denied petition for Floats . . . . . .
2. Approved and confirmed finally the *Randolph survey and plat*, and the *grant so surveyed and located to claimants* 12

April 14, 1885, Greeley, assignee for Hanson, files petition U. S. Dist. Court, Northern Dist. of Fla., praying survey of grant, alleging none ever made in conformity to mandate 13

Court same day orders Surveyor General Bloxham to make survey as prayed 14

Survey made by Deputy Hopkins and returned to court, March 1, 1888, ... 15

Appellee Sewall files petition of intervention, claiming Hanson interest, November, 1888, ... 18

Court decrees confirmation of Hopkins survey April 13, 1889, ... 15–16

Synopsis of Pleadings.

Appellants file petition, Dec. 1, 1890, setting up ownership of grant; want of notice of all proceedings under Greeley; Sewall petition; previous survey by Randolph, and the decree of 1851, finally confirming the same; claim new survey, by Hopkins, invalid for want of *jurisdiction* and interference with their vested rights; prays all proceedings by Greeley, et al., and Hopkins survey be set aside and declared void for general relief . 18–21

Order for publication and proof service 22

Sewall only of all defendants contests by filing demurrer to petition, Jan. 6, 1892, ... 22

Court on hearing sustains the demurrer of Sewall, Feb. 24, '92, ... 23

March, 1892, appellants file petition for rehearing . 23–4

Affidavit of clerk to same 24–5

June 7, 1892, court affirms its former ruling sustaining demurrer and dismissing original petition . . 26

Notice of appeal and allowance same 26

Bond on appeal 27

Inserted from agreed printed Record
mistake - not printed here

IN SUPREME COURT OF THE UNITED STATES.

JOHN M. HANSON)
vs.
UNITED STATES.)

In re petition of Sarah Van Wagenen, et al. vs. Rufus K. Sewall et al.—*Petition appeal.*

Assignment of Errors.

And now comes Sarah Van Wagenen, et al., the petitioner and plaintiff in error herein, by her said attorney, and says that in the record and proceedings in the above entitled matter there is manifest error in this, to wit:

That the said court had no jurisdiction in the matter of the application of J. C. Greeley and Rufus K. Sewall, herein, for the resurvey of the Hanson grant, and that the orders and decrees of the said court, ordering and confirming same of date, respectively, the 14th day of April, 1885, and the ——— day of ———————, 1889, are null and void.

Second. That the court erred in rendering its decree of the 7th day of June, 1892, dismissing the petition of the said Sarah Van Wagenen, et al., and refusing to set aside its former orders, ordering the new survey herein and confirmatory thereof.

Third. That the said court by its decree of the 15th day of April, 1851, finally approved the Randolph survey of said grant, and then and there finally confirmed to the petitioners the lands in said survey mentioned and petitioner's right thereto. And that having so acted it exhausted and lost its jurisdiction of the matter.

Fourth. That all of its proceedings since the day of said last mentioned decree are in manifest error. Wherefore complainants in error pray that the orders and decrees of the said District Court of the United States for the Northern District of Florida be reversed, and that the said court be ordered to decree for your petitioners, as prayed in their said petition.

H. H. BUCKMAN,
Atty. for Petitioner in Appeal.

We hereby consent that this assignment of errors may be

filed as of the date when the appeal was proved in this cause, and hereby agree to take no advantage of any failure to file the same at that time, and that the same may now be forwarded and filed as part of the record in this cause in the Supreme Court of the United States. This is without prejudice to any motions already filed in this cause in the Supreme Court.

H. BISBEE,
Atty. for Respondent.
H. H. BUCKMAN,
Atty. for Petitioner in Appeal.

BRIEF.

This is a proceeding to be conducted according to the *rules of a court of equity*, and in which the sentence of the court shall be by *decree*.

Act May 26, 1824, Land Laws of U. S., Vol. I, No. 998, Sec. 2.

This proceeding raises but one question—

The Question of Jurisdiction.

We contend that the action of the lower court, from the filing of the petition of Greeley to the order confirming the survey of Hopkins, was *without jurisdiction* and void.

The act of Congress passed May 23, 1828, Land Laws of United States, Vol. I, No. 1641, Sec. 6, conferred a *special jurisdiction* upon the Superior Courts of the United States for the districts of Florida for the adjudication of this class of claims, under certain provisions of the act of May 26, 1824, *Ibid.*, No. 998, known as the Missouri Act, made applicable to land claims in Florida.

The act of February 22, 1847, transferred all this class of actions from the Superior Courts of the districts to the District Courts of the United States.

Land Laws U. S., Vol. I, No. 1677.

The jurisdiction and power given by these acts was *limited* to the adjudication of claims too large for the commissioners to pass upon.

Adjudication within the meaning of the act consisted in the declaring of such claims as valid or invalid, and included the power to order and confirm surveys of the lands embraced in the claim.

Once *adjudicated*, the *power* and *jurisdiction* of the court was *exhausted* and gone, and any further proceeding was *coram non judice*.

The acts conferred a *limited* and special jurisdiction, and a *final decree* exhausted the power of action.

When, therefore, a claim too large for the commissioners to act upon had been presented to the court, and such claim had been, after a full hearing, adjudged *valid*, and a *final decree* had been pronounced finally and fully confirming such claim, and a survey thereof to the claimants, and such decree has been unappealed from, altered or amended within the time prescribed by the act, or rules and practice of the court, such action must become a *final termination* of the matter, and under the acts conferring the power, operate as a *bar* to all *further proceeding*.

The decree is conclusive between the United States and the claimants, their representatives or assigns.

Land Laws, U. S. Vol. 1. No. 1641, No. 13.

On April 15, 1851, a final decree was, by the Judge of the District Court of the United States, entered in this cause upon petition of Hanson and others, *finally and fully adjudicating* the claim to the claimants and *finally and fully approving and confirming the survey, plot and field notes of Randolph*, which decree was solemnly recorded in the Chancery Record Book A, page 49, Records of said court. See Printed Record, pages 12-13.

This decree was never amended, set aside, altered or appealed from.

It therefore represented the sum of the action of the court in that proceeding and the court in pronouncing it expended all the power and jurisdiction given to it under the several acts.

It *shut the mouth* of the claimants, their representatives, or assigns and the United States *forever*.

In was the direct result of the application of the original pe-

titioners; it confirmed a *survey* made in accordance with the mandate of *this* court and became the law of the case.

Neither the United States, the original claimants, nor their representatives, privies or assignees, could disturb it; and the District Court having *expended* the power given it, was absolutely without *jurisdiction* to re open the case or disturb the decree.

Heirs of Jose Higuera vs. United States. 5 Wallace, U. S. 827.

We submit the District Court had no *jurisdiction* of any of the so-called proceedings since 1851 and should have retained the petition of appellants and declared the relief prayed, by expunging those proceedings from its records; if this be true, the decree of the lower court should be reversed.

Inasmuch as there is no final certification of the question of jurisdiction by the District Judge it may be asked. Is the case properly before this court? After a careful examination of the authorities I answer that it is.

When this proceeding was taken it was but shortly after the passage of the act of 1891 and this court had not yet passed upon the question. But in the cases of Re Lehigh Mining and M'g. Co. 156 U. S. 322, Shields vs. Coleman 157 U. S. 168; and U. S. vs. Jahn 155 U. S. 109:

I gather that the court will not hunt over the record for the question, it must be plainly apparent; the certificate of the Judge is essential where other questions are involved, but in cases where the record shows that the question of jurisdiction is the *sole issue*, and the decision appealed from is plainly upon that *question only*, that *there* this court will act without the *formal certificate*.

The *formal certificate* was not made in *this case*: but *jurisdiction* was the *only* question *involved* and *passed upon*, and we respectfully submit that it is properly brought here for review.

The sole grounds raised in the petition of appeal is that the District Court having *exhausted* its *jurisdiction* by its final decree *of 1851* it had *no jurisdiction* to entertain the petition of *Greeley* in *1885* and *do any other act in the case as it did.*

See Petition of Appeal, page 7 of this brief.

The petition of appellants in the lower court was but a protest against the acts of the courts since 1851 and a bringing to its attention its want of power to do the acts complained of for *want of jurisdiction.*

Printed Record, Page 20.

Respondents—appellees here demurred to that petition on the ground the court had "*no jurisdiction* to grant any relief."

Printed Record, Page 23.

The court sustained the demurrer. Petitioners asked a rehearing on the sole question of *jurisdiction.*

Ibid, Page 23.

The decree denying the rehearing, affirming the order upon the demurrer and dismissing the petition, was upon the sole question of *jurisdiction*, that being the *only question.*

Ibid, Page 26.

We respectfully submit that the question is sufficiently apparent as the *only one involved and passed upon* and that it is sufficiently certified, though not in form, to give this court jurisdiction to determine the same.

Respectfully submitted,

H. H. Brockman

Counsel for Appellants.

Office Supreme Court
FILED.
SEP 27 1895
JAMES H. McKENNEY,
CLERK.

TRIAL LIST, Oct. T. 1895.
No. 140.

RESPONDENT'S BRIEF SUPPLEMENTED.

Supreme Court of the United States.

OCTOBER TERM, A. D. 1894.

No. 427. 140.

Sarah Van Wagenen et als., Appellants,

vs.

Rufus K. Sewall.

AGREED RECORD.

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AGREED RECORD.

RESPONDENT'S BRIEF.

May it please the Court:

This respondent in the above entitled cause had prepared a full, verified statement of the case and his relations thereto, on the original Record, sent up by these appellants, and on the presumption they did not intend to print under the Rule.

But they now come into court on an alleged Record, outside the Rule.

To this Record, Respondent acceeds, on suggestion to the Court of a fact suppressed in appellants' record and petition, viz.: that the Hopkins survey, sought to be vacated, is a survey duly approved by Government before confirmation, and has also passed into duly patented titles, by the United States, under which Respondent holds.

To the corrected copy of the Record, so agreed to, Respondent begs leave to reply in a supplementary Brief.

ANSWER.

At the opening of the defense on the agreed record of this case on inspection, we meet points at the threshold, which we deem fatal to the success of this appeal, in this court, warranting its dismissal with costs for this respondent, independent of any consideration on the merits.

I.

By their record here in court, it does not appear that appellants filed in the court below due assignment of errors with and in their petition

for the appeal taken; or set out separately, any error, specific reason, point in law or fact, to be urged before the appellate court, so as to entitle them to a hearing here, under Rule 35 of this court and the statute in such case made and provided.—[*See Rule 35, Supreme Court, p. 27: Agreed Record, p. 26.*]

II.

The vagueness, uncertainty, and multiplicity of issues on the face of the record are such, as to render defense impracticable by reason of confusion of issue. It does not appear what, answer should be made to: whether of matters and things alleged in the first petition; or to matters and things alleged in the second, relating to evidence presented; or to matters and things not stated in the suit of Francis Miles for confirmation of Grant; or under what Grant and confirmation plea is to be made; or if to all the issues combined in the three several proceedings had in the Court below. For want of a legal and definite issue of appeal; unity and precision of issue against him, Respondent claims it should be dismissed as to him.

III.

Because no specific reason, in law or fact, is alleged in said appeal, why judgments of the Court below, in each issue, should be set aside and not stand as declared by Court below; and because Appellants have come irregularly before the Supreme Court of the United States, the Circuit Court of appeals having prior jurisdiction as matter of law; and because appeal is taken where writ of error lies, the case being matter of law. [See 3 Dallas p. 409, Dewhurt vs. Couthard. 15 H., p. 11 Crawford vs. Points. 16 P., p. 45⅝. Parish vs. Ellis. 11 H., Bevius vs. Ramsey. 6 P., 495, U. S. vs. Nourse. Act Mch. 3, 1891.]

BRIEF.

1. The record shows, and Appellants do not deny, that Respondent holds a *tenancy*(1) in the Miles Grant, or "Miles Hanson Grant" as they call it, with appellants, viz.: all the right, title and interest of John M. Hanson in said Miles Grant, since 1848, in fee simple, duly recorded, being one *undivided third* of *Miles 16000 Acre Grant;* a *severalty*(2) of 5333⅓ acres of land of said Grant: which *undivided third* was an original conveyance by Miles to Hanson, Respondent's grantor.

(1) *Agreed Record, pp. 16, 17, Petition, R. K. S.*

(2) *Encyclopedia of Law, Eleventh Vol. Conveyance of an undivided part of land.*

2. Appellants further show, both in their petition and Record, that in the legal proceedings, creating the Randolph survey of 1851, contended for on an alleged judicial confirmation thereof in Judge Bronson's Court, that although holding *all* J. M. Hanson's title, in said Grant, to 5,33⅓ acres as aforesaid, this Respondent *was not a party thereto, had no notice thereof or privity therein.* [Agreed Record, pp. 3, 4, 19.]

3. Moreover, Appellants, in their Petition and Record show, that their Randolph survey, was a survey of the public lands of the United States, confirmed by the Court, *without(1) the approval* of Surveyor General Putnam, or his successors in office, for twenty years thereafter: i. e., that a Court of the United States, confirmed by solemn judicial proceedings in open Court, *a survey of the public lands of the United States, not having the sanction of its integrity, by the proper endorsement of United States authority.*

Therefore this Randolph survey and alleged judgment of confirmation of 1851, set out by these Appellants in their appeal, in all the proceedings of Court, Respondent(2) not being a party, having no notice thereof, though holding a record severalty in said Miles' Grant, and all the right, title and interest John M. Hanson had at the time, or was entitled to hold, or represent in said Miles' Grant, are a fraud(3) on Respondent; and the alleged proceedings and judgment are void, as to any right or interest of Appellee affected thereby.

4. The alleged survey and confirmation so relied on do not appear ever to have been executed and perfected in patented title, or endorsed as valid by the U. S.

5. The judgment claimed, in the creation of "*a Hanson et als. Grant,*" on the face of the record, appears a make-shift in a plea of the U. S. Dist. Atty.; had no relevancy to any proper petition for a survey and segregation of lands in the Miles Grant, to secure patented execution of their titles. [Agreed Record, p. 6.]

It seems a *formula* of judgment *to be rendered,* drawn and used by Dist. Atty. as an integrant part of his answer, to a suit *for floats,* and for abandonment of rights, in the Miles Grant, by Segui & Hedrick.

(1) *Agreed Record, pp. 11, 12.*

(2) *See 10 P., p. 450, Forbes vs. Bank of N. Y., C. J. Marshall. It is a principle of natural justice of universal obligation that before the rights of an individual can be bound by a judicial decision (sentence) he shall have notice of proceedings &c. 3 P., bond K.*

(3) *Agreed Record pp. 3, 4, and Petitions p. 19.*

The alleged judgment also lacks of record, all the natural and proper evidence of authenticity and judicial authority, in seal of court signature (1) of the Judge, or proper endorsement of a Clerk, or record completed.

We may safely assume, no Judge of the Courts of the United States would confirm an *unapproved* survey of the lands of the United States; and no such loose record, of a valid and intended judicial finding, involving interests of the United States, would have ever been suffered to issue, or rest, but on the fullest evidence of authenticity. The honor, as well as the intelligence and integrity of the Court is involved; and the memory of so able and just a judge as Hon. Isaac H. Bronson (whom this respondent well knew) it is an outrage on the Judiciary of this great nation, to drag into court here, *smirched*, with the claims of these appellants, with the neglect, looseness and treachery of proceedure implied and involved in their claim, though attempted to be supported, by the inferences, opinions, and surmises of an affidavit of Clerk Walter, as to the loose and treacherous methods of Judge Bronson's Court proceedure. The marked feature of our Federal Jurisdiction, is precision and absolute certainty, in final judgments. To be recognized as a legal factor, the record judgment *must be above suspicion, in all its aspects.*

MERITS.

I.

On the merits, we notice, the record shows this action to be on appeal from a judgment of the Court below, which alleges the reason for dismissal of Appellant's petition, a want of amendment, which in the discretion of the Court seemed necessary to a proper legal status of their cause, for hearing on the Merits. Nature of amendment is not indicated if suggested: whether by insertion of the fact supposed in their petition and record, that the offensive Hopkins survey and its confirmation were duly perfected and had passed into Patented titles to the land under it: or the omission of proper parties defendant.

The judgment of the court below suggests the cause *fatal* to a hearing of their case at its bar to be *neglect of these Appellants to amend.* We submit, that this fact of Record is a continuing fatality and a legal bar to a hearing of their appeal before this Court. It certainly is a discretionary factor in the judgment of the Court below, dismissing their petition. These Appellants (1) (Petition) (2) calls also for a *review and reversal*, in the Court below, of its own judgments and proceedings. It is therefore application to the sound discretion

(1) *Agreed Record, p. 19. Petition.* (2) *Agreed Record, p. 20.*

of the Court below to set aside its own judgments. [See agreed Record p. 19. Petition.]

But matters relating to and resting in the *discretion* of *a Court below*, are "*not subject to cognizance* of the Supreme Court." [Rescript, No appeal lies from such decision, is not subject to Exceptions or Writ of Error. 18 Howard, p. 394, Connor vs. Pugh's Lease; also 10 Peters, p. 366, Smith's Lease vs. Vaughn's Estate.]

II.

The Review and reversal of alleged judgment of the Court below, relating to the Randolph survey on the face of the record is a judgment of review in the premises, already substantially had, in a Redocketed(1) hearing and rejection of said Randolph survey and its alleged judgment of confirmation, as if null and void at law; a survey and judgment on lands of the United States in excess of the Spanish concession to Saml. Miles and in contravention of the mandate of the Supreme Court of the United States in the premises. Being a nullity and void, Appellants can take no rights under said survey and judgment. The location by mandate and decree of the Supreme Court of the Grant in controversy was 16,000 acres of land, fronting on Indian River, not exceeding three miles. But the land claimed by these appellants as by deed of the State, in virtue of a tax sale, is an alleged Grant (2) of 2,000 acres more.

III.

On the face of the Record, in this appeal, it appears that the United States is a party in interest with Respondent, in the issue made by Appellants, but have not been made defendant with him indicating a personal vindictive and partial procedure, in subversion of justice for vexatious use.

The point chiefly pressed by Appellants in their review, is, the *loss of some two thousand acres or more of the public land*, by the patented survey of Hopkins of the "Miles Grant," than was sold them by the State tax sale and assignment, under the Randolph survey of 1851, contended for in the premises.

The action appears to be an attempted substitution of 2000 acres or more by deed of the State of Florida (18,121.22, by plat of survey), under an alleged(3) Hanson Grant, for the 16,000 acres in the Miles Grant; an undivided third only of the latter of which, appellants are

(1) *Agreed Record, p. 14.*
(2) *Agreed Record Petition, p. 21.* (3) *Agreed Record, pp. 6 to 11.*

entitled to, and to the suit for which the U. S. has not been made a party defendant, and in which respondent has no interest; as matter of law, to estop a fraud on the public lands, this appeal should be dismissed.

IV.

By record it also appears the court below had already reviewed and rejected the Randolph survey and alleged judgment of confirmation, on a proper petition and order of notice, by parties in interest, in a recall of the case, with specific order thereunder, as to location, amount of acreage and form of survey to be made, of the land granted. [Agreed Record, pp. 13, 14.]

Jurisdiction of all courts over their own records, judgments and proceedings, is an inherent organic right, both for review, reversal and correction, essential to due administration of justice.

Such jurisdiction is generally, in lapsed cases, exercised by "scire facias"; but it is submitted, it may be done by redocketing lapsed cases as well. The record in the pending appeal shows shuch a proceedure of the court below.

The survey and confirmation contended for by Appellants, contravene, not only the concession of Spain to Miles, but the mandate of the Supreme Court of the United States; and if confirmed by any decree of an inferior Court as alleged, judgment of confirmation (if authentic) is void and a nullity, by reason of such contravention.

Said judgment, recalled to the inspection of the Court of its original jurisdiction after twenty years standing inchoate, on an order to redocket the case, as matter of law, its revival and validity, depended, on a *renewal*; and that *renewal*, subject to the order of said Court in its *discretion*: the proceedings being equivalent to a "scire-facias."

The alleged judgment having lapsed unexecuted for twenty years or more and being void on the face of the record, was superceded by a new and specific corrective order of survey, instead of being revived, which the court had full right (1) to do, by the law of the land.

V.

SUMMARY.

The decree of confirmation contended for, covering the "Hanson Grant survey," appears to be set up to hold the excessive acreage of the survey of the 15th of April, A. D. 1851; and it an authentic judgment originally, at the date of the State tax sale purchase, and of the

(1) *See Johnson's N. Y. Reports, Bank of N. Y. vs. Eden, p. 105.*

re-docketing of the case, was of *more than twenty years standing unexecuted and without a Patented confirmation of titles thereunder;* and was, in discretion of the Court, void as well as stale, and of no legal force to segregate the land described, either for State taxation or title; and if in the eye of the law a dead judgment and in the discretion of the Court a nullity by reason of conflict with superior authority, it could not be revived so as to make a fraudulent survey valid; and appellants ought not and cannot have the relief asked by their review pending to to enable them to hold more than two thousand acres of the public land, in excess of the original grant by a survey not conformable to the authorized prescription and mandate of the Supreme Court. [See 16 P. U. S. vs. Hanson estate p. 196: 14 Howard p. 524 Harris vs. Hardiman: 20 H., p. 206. Dictum, "Judgment merely void, Court has power, summarily, to declare inoperation and stop all proceedings under it."]

FINAL.

Because, by the Record, Respondent appears tenant of the Grant in question with these Appellants, under either survey, with no privity in the relief prayed for.

The tenancy of Respondent is shown in the land claimed, with Appellants, at the time of the Randolph survey and alleged confirmation, 1851, as well as at the date of their tax sale purchase and of their action; and also want of due notice to Respondent or participation by him in the legal proceedings in court, touching the survey and confirmation set up. These facts establish the want of privity, alleged; and show the baseless cause of the pending action against him.

R. K. SEWALL, pro. se.